U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36187822

Date: JAN. 16, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks second preference immigrant classification (EB-2) as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition and we dismissed a subsequent appeal. We dismissed a subsequent combined motion to reopen and motion to reconsider because the motion to reopen did not establish a new material fact supported by documentary evidence and because the motion to reconsider did not establish we misapplied law or policy in our prior decision. We then dismissed a second combined motion to reopen and motion to reconsider for similar reasons. The matter is now before us on a third combined motion to reopen and motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We incorporate by reference our analysis in the prior combined motion to reopen and motion to reconsider decision. By way of summation, we dismissed the Petitioner's appeal because he did not address or contest the Director's adverse decision regarding his qualification for the EB-2 classification, thereby abandoning his claim of eligibility for that classification, citing, *inter alia*, *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (providing that an issue not raised on appeal is waived). We dismissed the Petitioner's two subsequent combined motions to reopen and motions to reconsider because the motions to reopen did not establish a new material fact supported by documentary evidence, and because the motions to reconsider did not establish we misapplied law or policy, respectively.

Now, on motion to reopen, the Petitioner neither addresses the basis for which we dismissed the prior combined motion nor supports the instant motion with new, material documentary evidence. Rather, the third combined motion repeats the Petitioner's request for a discretionary national interest waiver. (We note that, again, the Petitioner does not address whether he qualifies for EB-2 classification.) Because the current motion to reopen neither states new facts material to the basis for which we dismissed the second combined motion—specifically, our underlying conclusion that the first combined motion did not satisfy the requirements for motions to reopen and motions to reconsider—nor is supported with new documentary evidence, it does not satisfy the requirements of a motion to reopen and it will be dismissed. 8 C.F.R. §§ 103.5(a)(2), (4).

Next, a motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As noted above, the Petitioner does not address the basis for which we dismissed the prior combined motion and, thus, does not establish that our prior decision was based on an incorrect application of law or policy and that it was incorrect based on evidence in the record at the time of the decision. Because the Petitioner has not established that our previous decision—specifically, our underlying conclusion that the first combined motion did not satisfy the requirements for motions to reopen and motions to reconsider—was based on an incorrect application of law or policy at the time we issued our decision on the second combined motion, the current motion to reconsider will be dismissed. 8 C.F.R. §§ 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.